

TERMS AND CONDITIONS FOR RETROFITTING EXISTING DISTRIBUTED GENERATION AT MUNICIPAL WATER/WASTEWATER FACILITIES

Revised: July 9, 2001

1. The incentives to retrofit existing distributed generation systems at municipal water/wastewater facilities ("Program") are being administered on behalf of the California Energy Commission by HDR Engineering, Inc. ("Program Administrator"). The incentive funds will be disbursed to the Applicant (Recipient) in accordance with the following Terms and Conditions:

2. The following are attached and hereby expressly incorporated into this agreement.

- Work Statement.
- Budget.
- Project Schedule.
- Special Conditions (if applicable).
- Resolution of the Recipient's Governing Body (if applicable).

Special Conditions that conflict with these standard provisions take precedence.

3. It is the sole responsibility of the Recipient to:

a) Sign all copies of this agreement and return it to the Program Administrator's office within 30 days. Failure to meet this requirement may result in the forfeiture of funds.

b) Enter into an agreement with a licensed contractor for the retrofit work.

c) Ensure that the agreement with the contractor specifies that the work done will be in compliance with the retrofit program guidelines as set forth herein and the overall program guidelines as set forth on the California Energy Commission website at: <http://www.energy.ca.gov/peakload/index.html>

d) Ensure all necessary permits and environmental documents are prepared and clearances are obtained from the appropriate agencies. Failure to obtain a permit from the local Air Quality Management District will result in forfeiture of funds.

e) Ensure the retrofit work is completed by the program deadline as indicated in the Work Statement. Extensions may be made under extenuating circumstances at the discretion of the Program Administrator.

f) Submit monthly progress reports to the Program Administrator unless another schedule is indicated in the Special Conditions or Work Statement. Each progress report should include at a minimum:

- Discussion of the status of the tasks in the Work Statement
- Discussion of the project's schedule
- Problems or delays encountered

- Proposed changes to the tasks in the Work Statement
- Costs to date compared to the budget.

g) Submit final report to the Program Administrator no later than 14 days following completion of the project, unless another timeframe is indicated in the Special Conditions or Work Statement. The report shall include at a minimum:

- Owner's name and Project Title
- A brief description of the project including the start date, completion date, and actual project cost with all necessary supporting documentation.
- Acknowledgement that the project is complete and operational in compliance with this agreement and all applicable codes and permits.
- Copies of all test, certifications, and permits.

The Recipient will incorporate into the Final Report any changes requested by the Program Administrator and submit three copies of the Final Report to the Program Administrator.

h) Request payment from the Program Administrator after successful completion of the project, submission of all reports, documentation of project cost, and acquisition of all permits.

4. Site Access Consent. The Recipient must give permission for the Program Administrator to enter the Recipient's property for inspection purposes. If necessary, the Recipient will obtain any necessary approvals from the building owner or building tenants to ensure access to the electric generation equipment by the Program Administrator.

5. Release of Funds

a) Funds shall be released after the project is complete in conformance with the Work Statement, all required reports and permits have been submitted and are satisfactory to the Program Administrator, and a request for payment has been received by the Program Administrator.

6. Recipient agrees to the following:

a) **Indemnification** – The Recipient agrees to indemnify, defend, and save harmless the Energy Commission, State of California, and the Program Administrator, its officers, directors, employees and agents ("Indemnified Parties") from any and all claims and demands against, or damages and losses to the Indemnified Parties accruing or resulting from the acts, error, or omissions of the Recipient or any and all of its contractors, subcontractors, materialmen, laborers, and any other person, firm, or

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corporation furnishing or supplying work, services, materials, or supplies in connection with this agreement or the performance of the work funded, in whole or in part, by this agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged as a result of this agreement or in the performance of the work funded, in whole or in part, by this agreement.

b) Assignment – This agreement is not assignable or transferable by Recipient either in whole or in part without the written consent of the Program Administrator.

c) Amendment – This agreement is not to be amended without the written consent of the Program Administrator. This agreement represents the entire agreement of the parties.

d) Governing Law – The laws of the State of California shall govern this agreement and venue shall be in the County of Sacramento.

e) Time – Time is of the essence in performance of this agreement.

f) Severability – If any portion of this agreement is found to be invalid, all other portions of this agreement remain in effect.

g) Program Evaluation, Monitoring

Verification, Random Audits, Record Retention and Access to Buildings – The Recipient agrees to allow the Program Administrator and/or the Energy Commission, its agent or any agency of the State, upon written request, reasonable access to the building to monitor or verify operational characteristics of the electric generation equipment and collect data, and the right of audit or inspection of all records that pertain to the project for a period of three years after that date payment is made to the Recipient by the Program Administrator. The Recipient agrees to retain all project related records during this time.

h) Waiver - No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this agreement shall be taken and construed as cumulative, in addition to every other remedy provided therein or by law.

i) Termination of Program—This Program may be terminated as follows:

With Cause: In the event of a breach by the Recipient of any of the Terms and Conditions of this agreement, the Program Administrator may, without prejudice to any of its legal remedies, terminate this

agreement for cause upon five (5) days written notice to the Recipient.

Without Cause: The Program Administrator may, at its option, terminate this agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Recipient. In such event, the Recipient agrees to use all reasonable efforts to mitigate the Recipient's expenses and obligations. If funds are available from the Energy Commission, the Program Administrator shall pay the Recipient for all satisfactory services rendered and expenses incurred within 30 days after such notice of termination, which could not by reasonable efforts of the Recipient have been avoided, but not in excess of the maximum that would otherwise have been payable under this agreement.

j) Union Organizing – The Recipient certifies that it shall not use funds from this agreement to assist, promote, or deter union organizing. The Recipient shall account for funds allocated for specific expenditures under this agreement and shall retain records to show no State funds were used for union organizing.

k) Compliance with law – The Recipient shall comply with all applicable federal, state and local laws, rules and regulations in the performance of the agreement or work performed that is funded, in whole or in part, by this agreement.

4. Contractor selection.

a) The Recipient agrees to follow any applicable procurement statutes in the awarding of any work funded, in whole or in part, by this agreement.

b) Contractors chosen to perform any work funded, in whole or in part, by this agreement must be properly bonded and licensed in accordance with California law.

c) The Recipient and/or contractor shall obtain all necessary construction and other permits necessary to construct the project.

d) The completed work shall meet all applicable federal, state and local laws, regulations, rules codes and standards.

e) The contractor and/or product manufacturer must warrant that any materials and equipment supplied to the Recipient shall be free from any defects in materials, workmanship, design and installation for 2 years from the date of completion of installation, and must guarantee free labor for any repairs needed within 1 year.